

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GM PHOTO, LLC, a New Jersey limited
liability company,

Plaintiff,

-against-

FOCUS CAMERA, INC., a New York
corporation, MICHAEL SILBERSTEIN, an
individual, and CHASSY KIRZNER, an
individual,

Defendants,

Case No. 1:22-cv-10339

**AFFIDAVIT OF GABRIEL SIMONY
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

1. My name is Gabriel Simony. If called as a witness, I would testify to the facts stated below.

2. I am a graduate of Brooklyn College in New York and hold a Bachelor of Business Administration.

3. I am the Chief Executive Officer of Plaintiff GM Photo, LLC (“GM Photo”), a New Jersey limited liability company.

4. GM Photo is a small business that has operated the Digital Village storefront for over 10 years on the Amazon.com, Inc. (“**Amazon**”) Marketplace, where it sells, among other consumer goods, high-end, top-quality photographic equipment.

5. Plaintiff's goods for sale on Amazon includes authentic, specifically handcrafted camera lenses manufactured by Sigma Corporation ("**Sigma**"), a premium Japanese photographic and video graphic technology manufacturer that exclusively produces photography and video-related products in Japan.

6. At all material times, GM Photo has sold 100% authentic and genuine Sigma products on Amazon.

7. GM Photo sources the subject Sigma products from a confirmable supply chain, specifically as a reseller of authorized Sigma distributor Circuit City Corporation, Inc. ("**Circuit City**"). A true and correct copy of a recent sales invoice from Circuit City to GM Photo dated October 3, 2022 (redacted) is attached as **Exhibit 1** to this Affidavit.¹

8. Circuit City is an authorized distributor of Sigma and has been authorized by Sigma Corporation of America to resell Sigma products. A true and correct copy of a Sigma Corporation of America authorization letter provided to GM Photo by Circuit City is attached as **Exhibit 2** to this Affidavit.

9. GM Photo has developed and enjoys a ten-year business relationship with Circuit City's principal(s) and, over the course of that relationship, has first-hand knowledge of Circuit City's relationships with authorized distributors, including Sigma, and its distribution of authentic, high-quality photographic equipment.

¹ In the interest of protecting certain competitive information, certain information has been redacted in the attached invoice. An unredacted copy of the invoice will be produced to Defendants in discovery subject to an agreement on a confidentiality order that will limit such use only for purposes of the litigation.

10. GM Photo's Sigma products for sale through Digital Village are shipped to Amazon buyers in original Sigma packaging and accompanied by factory warranty cards showing the original serial numbers of the products.

11. Focus Camera, Inc. ("**Focus Camera**") is a competitor of GM Photo and sells Sigma products on Amazon and in retail stores.

12. On October 9, 2022, at or around 12:14 AM, GM Photo received an email from Amazon email address notice-dispute@amazon.com with the subject line "Notice: Policy Warning," a true and correct copy of which is attached as **Exhibit 3** to this Affidavit.

13. On October 9, 2022, in response to the foregoing Amazon notice, I contacted Defendant Chassy Kirzner ("**Kirzner**") of Focus Camera via email on behalf of GM Photo and stated that GM Photo's Amazon-listed items are brand new and authentic models purchased through authorized channels. A true and correct copy of my email to Defendant Kirzner is attached as **Exhibit 4** to this Affidavit. Defendant Kirzner did not respond to my email.

14. On October 17, 2022, at or around 1:27 AM, 1:55 AM, 2:27 AM, and 3:34 AM, GM Photo received multiple additional emails from Amazon email address notice-dispute@amazon.com with the subject lines "Notice: Policy Warning," true and correct copies of which are attached as **Composite Exhibit 5** to this Affidavit.

15. Focus Camera is not the exclusive, gated, or restricted distributor of Sigma products on Amazon.

16. Upon information and belief, Focus Camera received brand registry rights from Sigma. The Amazon Brand Registry is a suite of website tools that are designed to protect intellectual property rights from legitimate threats or disputes.

17. Defendants' counterfeiting complaints against GM Photo, and other sellers including but potentially not limited to a seller named Trading Deals, were made by use of Amazon's website and brand registry system and Focus Camera's affiliation with Sigma's brand registry rights, specifically the website <https://www.amazon.com/report/infringement>.

18. On October 11, 2022, GM Photo, through counsel, sent a letter to Defendants Focus Camera and Michael Silberstein ("**Silberstein**") requesting immediately withdrawal of the false counterfeit claims to Amazon. A true and correct copy of our demand letter dated October 11, 2022, is attached as **Exhibit 6** to this Affidavit.

19. By notices sent on or about October 25, 2022, Amazon informed GM Photo that its listings were suspended and would not be reactivated unless Amazon received either (1) a letter of authorization (LOA) or licensing agreement (LA) from the rights owner indicating that you are authorized to use their intellectual property; (2) an invoice to indicate that Plaintiff's products are original and are not duplicates or copies thereby infringing on the intellectual property; or (3) a retraction from the rights owner to be sent to Amazon directly. True and correct copies of Amazon Suspension Notices are attached as **Exhibit 7** to this Affidavit.

20. GM Photo engaged legal counsel and diligently worked to submit the documents required by Amazon to re-activate the suspended listings, including

submitting (1) Plaintiff's purchase invoices from authorized Sigma distributor Circuit City; (2) a letter from Sigma authorizing Circuit City as a distributor; and (3) a letter from Circuit City authorizing GM Photo LLC as an authorized dealer. See Exhibits 1 and 2. Those efforts were not successful.

21. On October 24, 2022, GM Photo received a response, through its counsel, from Defendant Michael Silberstein on behalf of Focus Camera, a true and correct copy of which is attached as Exhibit 8 to this Affidavit.

22. As a longtime seller on Amazon, GM Photo's Digital Village account enjoys certain account benefits, including featured account, "Buy Box" benefits, and daily payouts that are at risk due to Defendant's false and malicious counterfeit claims.

23. The Digital Village account benefits are also "grandfathered" in, so to speak, meaning that they are not generally available to new Amazon marketplace sellers.

24. As stated on the Amazon notices that GM Photo Received and are attached as Exhibits 3 and 5, Amazon has stated in writing "We reserve the right to destroy the inventory associated with this violation if proof of authenticity is not provided within 60 days."

25. GM Photo's inventory that was associated with the suspended listings was worth approximately \$1.5 million at the time of the suspension.

26. GM Photo is informed that Defendants have made other false counterfeiting claims against other sellers on Amazon in advance or during the 2022 holiday buying season because Focus Camera takes the position that there are "too many sellers" of Sigma products on Amazon.

27. On or about November 14, 2022, Amazon reactivated GM Photo's suspended listings of Sigma products. However, under the current circumstances, there is a present danger that Focus Camera and Defendants will escalate Silberstein's written threat.


28. As an experienced and longtime seller on Amazon, the submission of false counterfeit claims against my company, GM Photo, will subject it to stricter scrutiny and could result in the temporary or permanent suspension of our seller privileges and other rights enjoyed by our seller account.

29. Attached as Exhibit 9 to this Affidavit is a true and correct copy of GM Photo's *Amazon Services Business Solutions Agreement* with Amazon.

30. If GM Photo were prohibited from selling products on Amazon, the world's largest online marketplace, it would be catastrophic to our business.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 7, 2022



Gabriel Simony

Sworn to before me on this
7th day of December, 2022



NOTARY PUBLIC

CYNTHIA M. CALLAHAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CA6436125
Qualified in Nassau County
My Commission Expires 07-11-2026